

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Nicholas J. Lombardi
DOCKET NO.: 05-01739.001-R-2
PARCEL NO.: 06-28-307-010

The parties of record before the Property Tax Appeal Board are Nicholas J. Lombardi, the appellant, by attorney Whitney T. Carlisle of McCracken, Walsh & de LaVan in Chicago and the DuPage County Board of Review.

The subject property consists of a 4.4 acre (191,664 square foot) vacant lot which is adjacent to the appellant's residence. On the property record card, the subject is described as "only 1 buildable acre; 3.4 acres in flood plain." The subject property is located in Oak Brook, York Township, DuPage County, Illinois.

The appellant's petition included a legal brief and numerous exhibits including historical documents referencing a floodplain designation (Exhibits B & F), a tax map depicting part of the parcel within Ginger Creek (Exhibit C), both aerial and ground-level photographs of the lot (Exhibits D & E), and a grid analysis (Group Ex. H). In the presentation of the grid analysis of ten suggested comparables located both in the subject's township and in the neighboring township of Downers Grove, the appellant's counsel made what he termed "an alternative argument" of unequal treatment in the assessment process.

The point of the legal brief, in particular, was to challenge the assessment applied to the northwest corner of the lot which is actually in Ginger Creek and thus under water along with a challenge to the assessment of the 3.4 acres located in a floodplain. Appellant acknowledged that the 3.4 acres of land located in a flood zone has been assessed at a reduced rate of \$1.28 per square foot of land area or half of the assessment applied to the remaining one-acre "buildable" portion of the lot of \$2.56 per square foot of land area. Despite this undisputed fact, appellant argues that, while this may be a uniform policy in the township, there is no basis for the valuation of the

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the DuPage County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	\$	302,370
IMPR.:	\$	0
TOTAL:	\$	302,370

Subject only to the State multiplier as applicable.

PTAB/cck/6-17

subject at 50% of estimated market value as opposed to perhaps 33.33% or, as the appellant contends, non-usable, unbuildable land which should have a zero assessment.

As noted in his opening statement, appellant's value evidence is based upon the state of the property and a "common sense approach" that it should not have the value ascribed to it by the assessor. Part of the evidence included photographs of the lot (Exhibit E) depicting a large amount of standing rainwater. The photographs were taken between Spring 2006 and October 2006 after a substantial rainstorm. One of the photographs depicted not only flooding, but also a "150 yard" sign; appellant acknowledged using the subject land as a driving range when permissible.

Appellant further testified that the lot was purchased in the 1960's or 1970's from a neighbor. As appellant understood it, there was some kind of agreement initially regarding a land exchange due to the flooding, but that was never consummated. Given the imposition of regulation by the Army Corp of Engineers, appellant has been unable to do anything affecting the creek and his property has become part of and an extension of the creek. Appellant stated in years past, the creek was dredged regularly and thus was only two or three feet wide. Appellant testified the flooding has continued to increase since the 1960's and 1970's with flooding occurring with each severe rainstorm. Moreover, a "homesite" on the parcel is only feasible in the northeast corner of the parcel, but this would require issuance of an easement by the appellant for access in and out as there is no road access alongside any part of the subject lot.

Prior to 2004, appellant contends the subject lot was assessed between \$120,000 and \$140,000, but in 2004 the historical treatment of the lot and the assessment changed significantly. Appellant then questioned whether he should not perhaps donate the land to the county since the land is part of Ginger Creek. As a follow-up by appellant's counsel, when asked whether appellant had ever investigated the possibility of donating the land to the county's conservation district or a forest preserve district, he seemed to indicate he was not familiar with any such process.

As an alternative argument, appellant presented evidence of assessment data on ten properties to compare to the subject property; comparables 1 through 3 were in York Township like the subject and comparables 4 through 10 were in Downers Grove Township. Appellant's counsel noted that uniformity of assessments is a county-wide standard and therefore, properties in another township were appropriate for presentation. The comparables were described only by their parcel identification number, street address, total land square footage, assessment (land and improvement, where applicable) and, in some instances,

sale price and date of sale. The ten comparable lots ranged in size from 54,414 to 530,996 square feet of land area. The land assessments for these lots ranged from \$150 to \$273,420. Only one sale price was within three years of the valuation date at issue, namely, comparable 4 consisting of 530,996 square feet of land area that sold in November 2004 for \$2,066,000. Calculated on a square foot basis, the comparable lots were assessed from less than \$0.01 to \$1.00 per square foot of land area. In the grid analysis, the appellant set forth a proportion of the land assessment for the subject property presumably attributed to the 3.4 acres of land being disputed; no dispute was being raised apparently as to the assessment of the "buildable" one acre. To this disputed 3.4 acre area, appellant set forth a land assessment valuation of \$189,570 or approximately \$1.28 per square foot. The subject parcel consisting of 191,664 total square feet with a total land assessment of \$302,370 actually has a land assessment of \$1.58 per square foot.

On the basis of the legal arguments and, alternatively, these comparable properties, the appellant felt that a land assessment for the subject parcel of \$125,050 or \$0.65 per square foot of land area was appropriate.

Upon questioning by the Hearing Officer, appellant acknowledged having been told by the seller of the subject property that part of the property is in the creek, although it was his understanding at the time that Ginger Creek would also be "backfilled." On examination by the board of review, appellant went on to acknowledge that he knew "right from the very first day" that part of the property was under the creek. (TR. 28)

The board of review presented its "Board of Review Notes on Appeal" wherein its final assessment of \$302,370 for the subject property was disclosed. In the course of the appellant's presentation of evidence, the board of review indicated that it agreed that part of the subject property is in a wetland and also is in a floodplain; the board of review further stipulated that Ginger Creek runs through the northwest corner of the subject lot. (TR. 21)

For the board of review's case-in-chief, testimony was presented by Ronald J. Pajda, Deputy Assessor for York Township along with documentary evidence filed previously by a predecessor township assessor. The documentary evidence consisted of a letter explaining the supporting data with legal argument, a grid analysis reiterating the appellant's three comparables within the township along with applicable property record cards, and a chart entitled "Assessors Office - Land Development." Pajda first testified that property values are ascertained from sales data. Then, under York Township's policy, property within a floodplain is given half-value throughout the township, regardless of

location. The assessor noted the subject property consists of a one-acre "homesite" or buildable land which was assessed at full value and 3.4 acres which has been listed as floodplain and assessed at half of the full value per square foot. The board of review concluded the township uniformly provided a reduction to properties within a floodplain within the jurisdiction.

The letter filed by the board of review explaining its supporting data and presenting legal argument asserted that the "assessor's comps" provided a land assessment range of \$1.00 to \$2.57 per square foot and thus the subject's land assessment of \$1.58 per square foot fell within the range of those comparables. Upon close examination of the data filed by the board of review, however, there is no land assessment data supporting an assessment range of \$1.00 to \$2.57 per square foot of land area. Besides repeating the appellant's grid analysis of comparables 1 through 3 in the township¹ which established a range of less than \$0.01 to \$1.00 per square foot, the only other data is a chart of 38 land assessments in the neighborhood of the subject, and including the subject, ranging from \$1.07 to \$2.74 per square foot of land area. No further explanation of the board of review's argument or detail of its data to support the argument was presented at the hearing.

In conclusion, the board of review argued the appellant submitted no market value evidence to show the subject's land assessment was not indicative of its fair market value or that it was assessed in an inequitable manner given its location in a floodplain. Based on its analysis of the data, the board of review requested confirmation of the subject's assessment.

On cross-examination, the township assessor was asked what sales data the township utilized to establish market value of the portion of the subject property which is in the floodplain. Padja responded sales data of "regular" buildable lots at their highest and best use establishes the market value for the township and then it is the York Township Assessor's policy to apply a 50% reduction in market value to land in a floodplain. Padja could not testify as to how long this policy had been in effect. When asked by appellant's counsel to cite another property in the record or otherwise, besides the subject, which has been assessed under this floodplain policy, Padja was unable to cite any other property.

¹ In the board of review's data, it is noted that appellant's comparable 3 has been improved with a building of 3,625 square feet which was constructed in 1941. The remaining size data and land assessment data is identical to that presented by the appellant. There are no notations on the property record cards of the comparables referencing property located in a "floodplain" like the notation on the subject's property record card.

On cross-examination, Padja was asked to explain the 38 properties, including the subject, set forth in the "land development" chart which was filed as part of the board of review's evidence. Padja testified the chart shows land values in the subject property's neighborhood. The properties range in size from about 5,009 to 199,463 square feet of land area and have total land assessments ranging from \$13,720 to \$546,520. These land assessments result in one property having a land assessment of \$1.07 per square foot, the subject having a land assessment of \$1.69 per square foot, and the remaining 36 properties having a land assessment of \$2.74 per square foot. Additionally, board of review chairman Anthony Bonavolonta testified the one property assessed at \$1.07 per square foot was due to a sale price of an unknown date according to information he received from a previous township assessor.

In rebuttal, appellant's counsel noted that the board's chosen comparables are all buildable lots; none of the properties are in a floodplain like the subject. Moreover, while the assessor testified there is a policy of reducing assessments on floodplain properties by 50%, there were no examples of that practice besides the subject property.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The focus of the instant appeal concerned appellant's "common sense" argument that due to flooding, the subject property is less valuable than comparable properties. Furthermore, appellant contends the 50% valuation reduction afforded by the township assessor due to the location in a floodplain is not adequate. Importantly, however, appellant provided no empirical data to indicate the property was over-valued and thus the Property Tax Appeal Board has given these arguments little merit.

Section 9-145(a) of the Property Tax Code provides that for the purposes of taxation, [e]ach tract or lot of property shall be valued at 33 1/3% of its fair cash value. (35 ILCS 200/9-145(a)). Furthermore, Section 1-130 of the Property Tax Code defines "Property; real property; real estate; land; tract; lot" as "[t]he land itself, with all things contained therein, . . . and all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code." (35 ILCS 200/1-130).

With regard to the portion of the lot in the floodplain and/or under water, the appellant contends this land should be valued at a lesser rate of value than the "dry" ground. The Board finds the evidence submitted demonstrates that the land assessments of land located in a floodplain within York Township are assessed at

a 50% reduction over neighboring land. The Board further finds appellant submitted no substantive evidence that clearly shows the land in the floodplain and/or under water decreases the subject's market value. In Lake County Board of Review v. Property Tax Appeal Board, 91 Ill. App. 3d 117 (2nd Dist. 1980), the property owners argued underwater property had no value for tax assessment purposes due to a reverter clause in the deed. The court held that the reverter clause made it unlikely that anyone would be interested in purchasing the property at any price, but that did not support a finding that such underwater property had no taxable value. The court further noted that "[a]ll property in Illinois is subject to taxation unless specifically exempted." [Citation omitted.] The court additionally cited "land" as meaning "not only the soil or earth but also things of a permanent nature affixed thereto or found thereon, (such) as water" (Black's Law Dictionary 1019 (4th ed. 1968)), and it has been held to include lakes, streams and submerged property. (Citing Slayton Gun Club v. Town of Shetek, Murray County, 286 Minn. 461, 176 N.W.2d 544 (1970)).

All real property in Illinois is assessed according to its "fair cash value." (35 ILCS 200/1-50). The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d. 428 (1970).

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill. App. 3d 179, 728 N.E.2d 1256 (2nd Dist. 2000); Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code Sec. 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Official Rules of the Property Tax Appeal Board, 86 Ill. Admin. Code Sec. 1910.65(c). Appellant submitted no evidence that indicated the subject property had suffered any decrease in value due to its location in a floodplain and/or under water, even though the assessor had already provided a 50% reduction in assessed value as compared to neighboring properties. Essential to a determination of the correct assessment of the subject property based on market value would be evidence of fair market value; appellant presented no evidence as to what effect location in the floodplain and/or under water has upon the market value of the property. The Board recognizes the appellant's premise that the subject's value may be affected due to its location in a floodplain, but without credible market evidence showing the

subject's land assessment at 50% less than non-floodplain property was inequitable or not reflective of market value, the appellant has failed to show the subject property's land assessment was incorrect.

Based on the aforementioned case law and statutes, the Board finds the subject property located in a floodplain and/or under the creek is assessable. Not only is the property not exempt from assessment pursuant to any provision of the Property Tax Code, but the appellant acknowledged use of the property when the flooding recedes. In summary, the Board finds the appellant failed to show the subject's land assessment was incorrect based on overvaluation.

The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill. 2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The Board finds the appellant has failed to overcome this burden.

The uniformity requirement prohibits taxing officials from valuating one kind of property within a taxing district at a certain proportion of its true value while valuating the same kind of property in the same district at a substantially lesser or greater proportion of its true value. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960); People ex rel. Hawthorne v. Bartlow, 111 Ill. App. 3d 513, 520 (4th Dist. 1983). A uniformity violation can be established through evidence regarding the assessed valuations of a small number of properties. Du Page County Board of Review v. Property Tax Appeal Board, 284 Ill. App. 3d 649, 655 (1996). The properties selected for comparison must be similar in kind and character and must be similarly situated to the subject property. Id. at 654.

There is no indication that properties in Downers Grove Township are in the same taxing district as the subject property and therefore those comparables have been given no weight in the Board's analysis. Moreover, as to uniformity of land assessments, the three comparables presented by the appellant within York Township have no indication that they are similarly situated to the subject property, namely, a location within a floodplain and/or under water. The fact that appellant's three York Township comparables have land assessments ranging from less than \$0.01 to \$1.00 per square foot of land area, without evidence of similarity, this data has no known bearing on the subject's land assessment.


The Board recognizes the appellant's lack of uniformity premise. However, the constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the taxation burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395 (1960). Although the comparables presented by the appellant disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity which appears to exist on the basis of the evidence. Therefore, the Property Tax Appeal Board finds that the subject's assessment as established by the board of review is correct and no reduction is warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: June 27, 2008



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal

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Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.